

General Information Letter: Nonresident with income apportioned to other states using statutory apportionment formula has income derived from other states, entitling it to apportion business income.

January 8, 2001

Dear:

This is in response to your letter dated July 19, 2000, in which you request a letter ruling. I apologize for the delay in responding. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

We are writing to request a General Information Letter with respect to the following issues:

Case #1-Facts

Taxpayer corporation "A" is an Illinois state-chartered financial institution, and "A" is not part of a unitary business. "A" has one or more physical branches in Illinois and has no nexus with any other state. Therefore, "A" is not "taxable in another state" per 86 Ill. Adm. Code Sec. 100.3200(a)(1). "A" collects interest income from customers in other states and has gains from a bond portfolio that is managed by an unrelated Missouri financial institution.

Case #1-Issue

Is "A" entitled to apportion income under 35 ILCS 5/304(c), thereby excluding 1) interest income from customers in other states and 2) gains from a bond portfolio managed in Missouri from its Illinois single-factor numerator, even though "A" is not "taxable in another state" per 86 Ill. Adm. Code Sec. 100.3200(a)(1)?

Case #2-Facts

Taxpayer corporation "P" is an Illinois state-chartered bank holding company that has a wholly-owned financial institution subsidiary, "S." "P" and "S" by their relationship are deemed to constitute a unitary business. "S" has one or more physical branches in Illinois, and "P" and "S" have no nexus with any other state. Therefore, no group member is "taxable in another state" per 86 Ill. Adm. Code Sec. 100.3200(a)(1). "S" collects interest income from customers in other states and has gains from a bond portfolio that is managed by an unrelated Missouri financial institution.

Case #2-Issue

Are "P" and "S" as a unitary business entitled to apportion income under 35 ILCS 5/304(c), thereby excluding 1) interest income from customers in other states and 2) gains from a bond portfolio managed in Missouri from its Illinois single-factor numerator, even though no group member of the unitary business is "taxable in another state" per 86 Ill. Adm. Code Sec. 100.3200(a)(1)?

Response

Section 304(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides in part:

The business income of a person other than a resident shall be allocated to this State if such person's business income is derived solely from this State. If a person other than a resident derives business income from this State and one or more other states, then, for tax years ending on or before December 30, 1998, and except as otherwise provided by this Section, such person's business income shall be apportioned to this State.

Section 1501(a)(20) of the IITA defines "resident" to mean only certain individuals, trusts and estates. Section 1501(a)(14) of the IITA provides that any person who is not a resident is a "nonresident." A corporation is therefore a nonresident, regardless of state of incorporation, place of commercial domicile or any other factor.

As nonresidents, the corporations in your cases would be permitted by Section 304(a) of the IITA to apportion their business income as long as that income is not "derived solely from this State." This is not the same standard as the "taxable in another state" standard construed in 86 Ill. Admin. Code Section 100.3200 for purposes of allocating nonbusiness income and applying the so-called "throwback" rule in Section 304(a)(3)(B)(ii) of the IITA. A person may derive business income from a state and yet not be taxable by that state.

86 Ill. Admin. Code Section 100.3320(a) states that a nonresident who is "taxable in another state" may apportion its income. This provision could be read to imply that a nonresident must actually be taxable in another state in order to apportion income. That inference would be contrary to the Section 304(a) of the IITA, and the regulation cannot be so construed.

In general, if application of the apportionment rules in Section 304 of the IITA would source business income to another state, that business income is derived from that state for purposes of Section 304(a) and the taxpayer is entitled to apportion its business income. For example, a financial organization that receives interest income from its customers at a location outside Illinois would apportion business income to that location under Section 304(c)(1)(C), which sources to Illinois only:

Dividends, and interest from Illinois customers, which are received within this State.

Accordingly, in each of your two cases, assuming the corporations described are financial organizations who are and will continue to be receiving interest from customers at locations outside Illinois, those corporations will be entitled to apportion their business incomes because use of the

appropriate apportionment formula would source some of their business incomes to Illinois and some to another state.

The two cases presented in your letter do not provide sufficient facts concerning the management of bond portfolios to determine whether gains realized on those portfolios are attributable to Illinois or to another state, and no opinion is expressed on that issue.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy Chief Counsel -- Income Tax